

**MINUTES OF THE OPEN SESSION  
OF THE RHODE ISLAND ETHICS COMMISSION**

**July 26, 2005**

**The Rhode Island Ethics Commission held its 14th meeting of 2005 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, July 26, 2005, pursuant to the notice published at the Commission Headquarters and at the State House Library.**

**The following Commissioners were present:**

**James Lynch, Sr., Chair            James V. Murray  
Patricia M. Moran, Vice Chair\* James C. Segovis  
George E. Weavill, Jr., Secretary Barbara Binder  
Richard E. Kirby\*   Ross Cheit**

**Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Jason Gramitt, Staff Attorney/Commission Education Coordinator; Staff Attorneys Dianne L. Leyden and Macall Robertson; and, Commission Investigators Steven T. Cross and Peter J. Mancini.**

**At approximately 9:01 a.m., the Chair opened the meeting. The first order of business was to approve the minutes of the Open Session held on July 12, 2005. Upon motion made by Commissioner Binder,**

**and duly seconded by Commissioner Moran, it was**

**VOTED: To approve the minutes of the Open Session held on July 12, 2005.**

**AYES: James Lynch, Sr., Patricia M. Moran, James C. Segovis, Barbara Binder, and Ross Cheit.**

**ABSTENTIONS: George E. Weavill, Jr. and James V. Murray.**

**The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date.**

**The first advisory opinion was that of The Honorable Frank Caprio, a judge of the City of Providence Municipal Court. The petitioner was present with his son, Senator Frank T. Caprio. Staff Attorney Gramitt presented the Commission Staff recommendation.**

**\* At approximately 9:10 a.m., Commissioner Kirby arrived, during the presentation of the Commission Staff recommendation.**

**The petitioner stated that he concurred with the recommendation. Commissioner Weavill inquired whether any election violations could come before the petitioner in his position. The petitioner replied that**

no such matters would come before him as the court's jurisdiction is limited and includes traffic violations and environmental matters in the City of Providence. Commissioner Cheit pointed out that judges have their own ethical rules and requested that the advisory opinion be amended to state that it does not address such rules.

Commissioner Segovis asked the petitioner whether he would be appearing in advertisements as "Judge Caprio." The petitioner stated that he would not wear his robe or appear before the court in these advertisements. He indicated that he will follow any other recommendations made by the Ethics Commission. Commissioner Moran noted that there is no way to prevent people from referring to him as judge.

Commissioner Murray made a motion to adopt the draft advisory opinion with the modification that judicial cannons be added to the last sentence of the draft advisory opinion. Commissioner Binder duly seconded this motion. Commissioner Kirby pointed out that he had heard enough of the discussion to participate in the vote. It was then unanimously

**VOTED:** To issue a modified advisory opinion, attached hereto, to The Honorable Frank Caprio, a judge of the City of Providence Municipal Court.

**AYES:** James Lynch, Sr., Patricia M. Moran, George E. Weavill, Jr.,

**Richard E. Kirby, James V. Murray, James C. Segovis, Barbara Binder, and Ross Cheit.**

**The next advisory opinion was that of The Honorable Anastasia P. Williams, a legislator serving in the Rhode Island House of Representatives. The petitioner was present and Joseph Abbati appeared along with her. Staff Attorney Gramitt presented the Commission Staff recommendation. The petitioner stated that she was satisfied with the recommendation.**

**Commissioner Cheit asked the petitioner why she had a license that she never used. The petitioner stated that she had applied for the license awhile ago when she had two career options. She stated that one option was to do child care work. She noted that many of her family members do child care work, but that it was more appropriate for her not to pursue using the license at that time.**

**Commissioner Cheit inquired about the requirements for maintaining her license. The petitioner replied that she has to take several classes each year and that she has to renew her license every two years. Commissioner Cheit asked whether the petitioner planned to use her license in the future. The petitioner replied that she planned to use it someday, but that she is not ready to do so yet and that she does not want to forfeit her license.**

**Commissioner Weavill inquired whether her employment with the city**

is as a civil servant or an appointed position. The petitioner stated that she monitors programs and that her position is not political. Mr. Abbati stated that her position has similar benefits to civil service, but that it is classified differently. He stated that she has union status and cannot be fired at will, only for cause.

Commissioner Segovis asked the petitioner what assurances the Commission will have that she will not use her license in the near future. The petitioner replied that she will give the Commission her word that she will not use her license in the near future. She stated that she cannot see herself leaving her current employment in the next few years.

Mr. Abbati compared this situation by analogy to a teaching license. He stated that people get a license to teach, but choose to never use it. He pointed out that if the petitioner does not maintain her license, she will have to start the licensing process from the beginning should she choose to use it someday. He noted that the certification process to get a license has also changed since she got her license. He emphasized her representation that she will not use it in the immediate future.

Commissioner Binder asked the petitioner to elaborate on her earlier comment that her family members have these licenses. Commissioner Kirby inquired whether there was a conflict because the legislation may benefit her family members. The petitioner stated

that her heritage is to call these individuals even though they are not her blood relatives.

Commissioner Kirby asked whether the petitioner may choose to use her license if the providers are allowed to engage in collective bargaining. The petitioner stated that this would not change her decision not to use her license in the near future.

Staff Attorney Gramitt pointed out that the Commission has applied the same standard in the past and has considered whether there was a reasonable likelihood that a petitioner would be financially impacted in the foreseeable future. He stated that the Commission Staff recommendation is consistent with the Commission's prior interpretations of the Code given the petitioner's representations.

Commissioner Cheit expressed his opinion that the petitioner has an interest because she is expressing her intent to use her license by virtue of keeping it as an option. He stated that the petitioner has an option and that the value of the option can go up based upon the legislation. In response to Commissioner Cheit, the petitioner agreed that the value of the license could increase.

Mr. Abbati expressed his opinion that just because the petitioner has a license does not mean that she will benefit from it. He stressed the petitioner's representation that she has no intention of using the license in the immediate future because she will not forfeit her

current position.

Commissioner Murray asked the petitioner what she would have to do to get a new license if she let this one lapse. The petitioner replied that there is an entirely new process now. Commissioner Murray then asked what she has to do now to keep it. She stated that she has continuing legal education requirements.

Commissioner Kirby pointed out that his father kept a license that he did not use and that people keep up licenses that they do not use for many reasons, such as for personal attachment to it or a for credentials. Commissioner Murray stated that he would approve the recommendation based on the fact that the petitioner has not used her license in eleven years.

In response to Commissioner Moran, the petitioner stated that she would not be influenced by her license. Commissioner Moran stated that she agrees with Commissioner Murray and inquired about section 5(d)'s language on financial gain, specifically whether legal financial gain includes union membership.

Commissioner Segovis stated that he appreciated the petitioner's candor and wondered whether this is really an arm-length situation given that the petitioner has the potential to use her license. Commissioner Moran pointed out that the petitioner's constituency may want her to vote against the legislation. Commissioner Cheit

responded that the petitioner still has an interest and conflict. Commissioner Moran replied that the petitioner represents her constituency, not herself.

The petitioner stated that “my word is my bond” and that she will not activate her license in the near future. She stated that if this legislation became law and she then decided to leave her municipal job, she would seek another advisory opinion about what she could do then. Commissioner Cheit replied that this would not solve the problem because the option alone has value.

Chair Lynch stated that he takes the petitioner at her word and that the Commission cannot determine what the petitioner will do in the distant future. Mr. Abbati stated that even if the petitioner let her license lapse, she could always go and get a new one and create a conflict. Commissioner Cheit replied that the focus is the current situation and right now the petitioner, in his opinion, has an interest.

Commissioner Kirby noted that there is a difference between holding a license and participating in CCAP, which is what this legislation at issue regards. Staff Attorney Gramitt clarified that just having a license does not give the petitioner the benefits of CCAP. He stated that participating in CCAP requires more than a license. He noted that if the legislation passed today it would not impact the petitioner in anyway because she does not participate in CCAP.



**Commissioner Kirby inquired whether there are any active license holders that do not participate in CCAP. Chair Lynch stated that such individuals exist and noted that past discussions on the floor of the House of Representatives included such information. Commissioner Kirby stressed that there is a difference between the financial impact of CCAP and holding a license. Commissioner Segovis commented that, historically, an entire group of workers generally benefits from the creation of a union.**

**Upon motion made by Commissioner Binder, duly seconded by Commissioner Murray, it was**

**VOTED: To issue an advisory opinion, attached hereto, to The Honorable Anastasia P. Williams, a legislator serving in the Rhode Island House of Representatives.**

**AYES: James Lynch, Sr., Patricia M. Moran, George E. Weavill, Jr., Richard E. Kirby, James V. Murray, James C. Segovis, and Barbara Binder.**

**NOES: Ross Cheit.**

**The Honorable Anastasia P. Williams thanked the Commissioner for the constructive communication. She reiterated that her word is her bond and that her current position serves her well.**

**Commissioner Segovis noted that The Honorable Grace Diaz recently had a similar request and that the Commission did not issue her an advisory opinion. He pointed out that the advisory opinion just issued did not contain an analysis of this past request and that they are different. He requested that the Commission Staff provide the Commission with a comparison of these requests that includes the reasons for rejecting the prior request.**

**Chair Lynch stated that he would ask the Executive Director to look into whether the Commission Staff can provide the Commission with such information. Commissioner Segovis stated that he would like this information so that he can better understand the flow of the arguments at issue.**

**Executive Director Willever replied that there are potential problems with putting such information in an advisory opinion since an advisory opinion that is not approved has no precedential value and is not published. He stated that all that exists in such situations is the staff recommendation. He noted that he would look into providing this information to the Commissioners. Chair Lynch stated that he and the Executive Director would discuss this further. Chair Lynch also pointed out that the Commission Staff has many projects that it is already working on for the Commission right now.**

**The next advisory opinion was that of Lisa W. Bryer, a prospective applicant for the position of Jamestown Town Administrator. The**

**petitioner was not present. Staff Attorney Gramitt presented the Commission Staff recommendation.**

**Commissioner Weavill questioned whether the petitioner's proposed position would have supervisory authority over her spouse's position. Staff Attorney Gramitt noted that such information would not impact the Commission Staff recommendation and that the question presented is simply whether she can serve in both positions. He pointed out that the petitioner will have to regulate her participation in light of any supervisory relationships and that right now such questions are too hypothetical to address.**

**Upon motion made by Commissioner Segovis, duly seconded by Commissioner Moran, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Lisa W. Bryer, a prospective applicant for the position of Jamestown Town Administrator.**

**AYES: James Lynch, Sr., Patricia M. Moran, George E. Weavill, Jr., Richard E. Kirby, James V. Murray, James C. Segovis, Barbara Binder, and Ross Cheit.**

**The next advisory opinion was that of Peter J. O'Connell, a member and Chairman of the Zoning Board of Review for the City of Newport. The petitioner was not present. Staff Attorney Gramitt presented the**

## **Commission Staff recommendation.**

**Upon motion made by Commissioner Moran, duly seconded by Commissioner Weavill, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Peter J. O'Connell, a member and Chairman of the Zoning Board of Review for the City of Newport.**

**AYES: James Lynch, Sr., Patricia M. Moran, George E. Weavill, Jr., Richard E. Kirby, James V. Murray, James C. Segovis, Barbara Binder, and Ross Cheit.**

**The next advisory opinion was that of Bert W. Anger, Chairman of the Board of Directors for the Bristol County Water Authority ("BCWA"). The petitioner was not present. Staff Attorney Leyden presented the Commission Staff recommendation. She informed that Attorney Mack wanted to attend, but could not make it, and shared Attorney Mack's request that if there are any problems with this opinion that she be called because she will arrange to come right over.**

**Commissioner Weavill noted that seven of the nine members of the BCWA's Board of Directors fit into the class and that he was troubled that a supermajority of the members have an interest. In response to Commissioner Weavill, Staff Attorney Leyden stated that the class exception applies and past advisory opinions have permitted**

**petitioners to participate in similar situations. Commissioner Weavill stated that the opinion still troubled him. Commissioner Murray stated voiced his opinion that the class exception applied.**

**Commissioner Kirby pointed out that he would like to know more about who has the appointing authority for the Board as there are a disproportionate number of members over age 65. Staff Attorney Leyden replied that she was not provided information about the appointing authority. Commissioner Segovis stated that he was also troubled by this situation, but that noted this is a large class.**

**Upon motion made by Commissioner Segovis, duly seconded by Commissioner Murray, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Bert W. Anger, Chairman of the Board of Directors for the BCWA.**

**AYES: James Lynch, Sr., Patricia M. Moran, George E. Weavill, Jr., Richard E. Kirby, James V. Murray, James C. Segovis, Barbara Binder, and Ross Cheit.**

**At approximately 10:05 a.m., upon motion made by Commissioner Kirby, duly seconded by Commissioner Weavill, it was unanimously**

**VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(1), (a)(2), and (a)(4), to wit:**

**a.) To approve the minutes of Executive Session held on July 12, 2005.**

**b.) To discuss litigation.**

**AYES: James Lynch, Sr., Patricia M. Moran, George E. Weavill, Jr., Richard E. Kirby, James V. Murray, James C. Segovis, Barbara Binder, and Ross Cheit.**

**\* At approximately 10:06 a.m., Commissioner Moran left the meeting.**

**At approximately 10:30 a.m., the Commission returned to Open Session. Chair Lynch reported that the Commission took the following actions in the Executive Session:**

**a.) Voted to approve the minutes of Executive Session held on July 12, 2005.**

**The next order of business was sealing the minutes of the Executive Session held on July 26, 2005. Upon motion made by Commissioner Weavill, duly seconded by Commissioner Segovis, it was unanimously**

**VOTED: To seal the minutes of the Executive Session held on July 26, 2005.**

**AYES: James Lynch, Sr., George E. Weavill, Jr., Richard E. Kirby, James V. Murray, James C. Segovis, Barbara Binder, and Ross Cheit.**

**The next order of business was discussion of Commission Regulations. Commissioner Cheit requested that regulations on hardship be added to the list of regulations the Commission considers clarifying in the future.**

**The next order of business was the Director's Report. Executive Director Willever reported that there are twenty-nine complaints pending, and that eleven of them are related to the same event. He reported that the non-filing complaints filed for the financial disclosures statements related to calendar year 2003 were all resolved by the last Commission meeting. He reported that eight of the thirteen non-filing complaints filed for the financial disclosure statements related to calendar year 2004 have settled. He reported that two of the remaining eight complaints may be going to a hearing and that the rest of them continue to be worked on. Executive Director Willever further reported that after this meeting only six advisory opinions will be pending and that he considers the advisory opinion backlog to now be eliminated.**

**He reported that there is sufficient funding available in the budget to send four to seven people to the COGEL Conference. He asked Commissioners to show, by raising their hands, who is interested in**

attending. Five members raised their hands. Executive Director Willever stated that the Commissioners will have priority to attend. He stated that the Commission is saving money this year on continuing legal education for its Staff because there are enough free classes for the Staff Attorneys to attend for CLE credit. In addition, he reported that Attorney Robert Silva, who was issued an advisory opinion request at the last meeting, called him personally to apologize for being unable to attend the last meeting and asked that his regrets be passed onto the Commission.

The next order of business was New Business. There was none.

At approximately 10:40 a.m., upon motion made by Commissioner Kirby, duly seconded by Commissioner Weavill, it was unanimously

**VOTED:** To adjourn the meeting.

**AYES:** James Lynch, Sr., George E. Weavill, Jr., Richard E. Kirby, James V. Murray, James C. Segovis, Barbara Binder, and Ross Cheit.

Respectfully submitted,

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George E. Weavill, Jr.

Secretary